

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
REGIONAL OFFICE
EPA
OFFICE OF COMPLAINT
AND
PROTECTION
REGION V

ES
7/5/94

IN RE:

DAYTON ELECTROPLATE, INC.
1030 VALLEY STREET
DAYTON, OHIO 45404

EPA I.D. No.: OHD 004 278 628

Respondent.

DOCKET NO.

Y-W-014 '94



COMPLAINT AND PROPOSED COMPLIANCE ORDER
and
NOTICE OF OPPORTUNITY FOR HEARING

I

COMPLAINT

GENERAL ALLEGATIONS

1. This is a civil administrative action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. §6928(a)(1), and Sections 22.01(a)(4), 22.13 and 22.37 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR §§22.01(a)(4), 22.13 and 22.37.

2. The Complainant is, by lawful delegation, the Associate Division Director, Office of RCRA, Waste Management Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. The Respondent is Dayton Electroplate, Inc., Dayton, Ohio, which is and was at all times relevant to this Complaint, the owner or operator of a facility located at 1030 Valley Street, Dayton, Ohio.

4. Respondent is a "person" as defined at Section 1004(15) of RCRA,

42 U.S.C. §6903(15), and Ohio Administrative Code (OAC) 3745-50-10(A)(79).

5. According to the Ohio Secretary of State's Office Respondent is an Ohio Corporation. Respondent's Registered Agent is Mr. Gordon H. Savage, 2700 Kettering Tower, Dayton, Ohio 45423.

6. Respondent owns and operates a facility that generates hazardous waste as defined by Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and OAC 3745-51-03. The former owner of the facility (Dayton Rust Proof Company) filed a Notification of Hazardous Waste Activity on August 18, 1980. The notification stated that the company generated the following hazardous waste codes: F006, F007, F008 and F009. Present control of the facility was succeeded to the current owner, Dayton Electroplate, Inc., on June 1, 1984.

7. The U.S. EPA granted interim authorization to the State of Ohio from July 15, 1983, until January 31, 1986, but retained the authority to issue final RCRA permits. The U.S. EPA granted final authorization to the State of Ohio on June 30, 1989, pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), to administer and enforce a hazardous waste program in the State of Ohio. 40 CFR §272.1800 (7-1-92 Ed). The regulations comprising the applicable State hazardous waste management program for the State of Ohio were incorporated by reference into Federal law at 40 CFR §272.1801(a). During periods when the State of Ohio did not have authorization, Federal regulations were applicable to persons who treated, stored or disposed of hazardous waste.

8. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. §6926(g), U.S. EPA must carry out the new requirements promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, until such time as the State is authorized to carry out such program. Under the terms of Section 3006(g) of RCRA, the requirements established by HSWA are effective in

all States regardless of their authorization status and are implemented by U.S. EPA until the State is granted final authorization with respect to those requirements.

9. Pursuant to Section 3006(g) of RCRA, U.S. EPA has jurisdiction to implement and enforce those portions of the HSWA requirements for which the State is not yet authorized, including the regulations that control the land disposal of hazardous waste and associated regulations commonly referred to as Land Disposal Restriction (LDR) regulations. These regulations are set forth at 40 CFR §268 and in revisions to 40 CFR §§260-265, 268, 270, and 271. Regulations concerning the "First Third" of the listed hazardous wastes (including certain F006 wastes) became effective on August 8, 1988. Ohio was granted authorization to administer this portion of the RCRA program on August 19, 1991. Ohio regulations concerning the "First Third" LDR regulations were codified by the State of Ohio on April 6, 1992. Prior to that, final enforcement of regulations covering the "First Third" LDR regulations were being carried out by U.S. EPA.

10. Any violation of regulations promulgated pursuant to Subtitle C, Sections 3001-3019 of RCRA, 42 U.S.C. §§6921-6939, or any State provision approved pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, constitutes a violation of RCRA, subject to the assessment of civil or criminal penalties and compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. §6928.

11. U.S. EPA has provided notice to the State of Ohio concerning this Complaint.

COUNT ONE

12. The General Allegations of the Complaint (paragraphs 1 through 11) are incorporated by reference as though set forth here in full.

13. Pursuant to 40 CFR §268.7(a)(7) generators are required to retain, on-site, a copy of all LDR Notifications, certifications, demonstrations, waste analysis data and other documentation produced as required by this section for at least five (5) years from the date waste subject to such documentation was last sent to off-site treatment, storage, or disposal facilities.

14. On September 20 and 21, 1990, a representative of the Ohio Environmental Protection Agency (OEPA) conducted an inspection of Respondent's operation. The purpose of the inspection was to determine Respondent's compliance with RCRA regulations, including a determination of Respondent's compliance with applicable LDR regulations. The inspector documented that on March 2, 1990, a shipment of hazardous waste (F006) was sent to Chemical Waste Management of Indiana, Inc., 4636 Adams Center Road, Fort Wayne, Indiana under manifest number INA 0371242. Respondent did not have the accompanying LDR Notification in its files for this shipment.

15. On June 26, 1992, as a result of the OEPA inspection, the U.S. EPA issued a Notice of Violation (NOV) to Respondent. The NOV was addressed to Mr. Paul Borum of DEI, and was sent by Certified Mail. The return receipt post marked July 9, 1992, was returned to U.S. EPA showing that the NOV was delivered to DEI. On November 6, 1992, a representative of U.S. EPA telephoned and spoke with Paul Borum as DEI had not responded to the NOV. Mr. Paul Borum stated he would check into the matter and call back. No further response was received by U.S. EPA to the NOV.

16. On August 3, 1993, a second Notice of Violation was sent to Respondent, as no reply had been received to the NOV of June 26, 1992. The second NOV was also sent Certified Mail, Return Receipt Requested. The NOV was received by DEI on August 9, 1993. U.S. EPA received no response from Respondent. On September 22, 1993, at 10:15 am (CDT), a representative of U.S. EPA telephoned Respondent and asked to speak to Mr. Charles Borum. A DEI employee answered the telephone indicating Mr. Borum was not in the office and would return that afternoon. A message was left for him to call the U.S. EPA representative. No return call was received. U.S. EPA received no response from Respondent to the second NOV.

17. On November 26, 1993, a Request for Information pursuant to Section 3007 of RCRA was sent to Respondent's Registered Agent. The Request for Information required that Respondent furnish copies of all LDR notifications for the last five calendar years.

18. Respondent's response to EPA's Information Request did not include a LDR Notification for manifest number INA 0371242. EPA has not received information stating the Respondent has remedied the original LDR Notification recordkeeping violation found during the September 20, 1990, inspection. Therefore, the Respondent is found in violation of 40 CFR §268.7(a)(7).

COUNT TWO

19. The General Allegations of the Complaint (paragraphs 1 through 11) are incorporated by reference as though set forth here in full.

20. Pursuant to 40 CFR §268.7(a)(1), hazardous waste generators are required to determine if their waste is restricted from land disposal. If a generator determines he is managing a restricted waste and the waste does not

meet the applicable treatment standards, or exceeds the applicable prohibition levels set forth in 40 CFR §268.32 or Section 3004(d) of RCRA, then 40 CFR §268.7(a)(1) requires the generator to notify the treatment or storage facility in writing of appropriate treatment standards set forth in Subpart D and any applicable prohibition levels set forth in 40 CFR §268.32 or Section 3004(d) of RCRA for each shipment of waste.

21. As stated in Paragraph 17 of Count One, an Information Request was sent to Respondent's Registered Agent on November 26, 1993. The Information Request asked the Respondent to furnish a copy of his LDR Notifications for the past five (5) years.

22. On January 12, 1994, Respondent furnished U.S. EPA with a total of thirty-nine manifests. Eight of these manifests had previously been voided. Of the thirty-one valid manifests, eleven were missing their corresponding LDR Notifications. Manifests sent to U.S. EPA that did not have corresponding LDR Notifications were: LA A 3032164 (May 28, 1991), LA A 3032165 (June 12, 1991), LA A 3040453 (July 31, 1991), LA A 3040455 (August 13, 1991), LA A 3045870 (September 7, 1991), TN 0002501 (December 20, 1991), TN 002508 (October 19, 1992), PAC 5573212 (April 13, 1993), PAC 5573223 (April 12, 1993), 57160 (April 22, 1993) and TN 0004811 (January 3, 1994).

23. Between March 22, 1994, and March 25, 1994, a representative of U.S. EPA conducted phone interviews with the five (5) treatment, storage, and disposal (TSD) recipient facilities that had accepted the eleven manifested shipments of hazardous waste previously mentioned in paragraph 22 of Count Two. Based on the information obtained in these telephone interviews and in supporting documentation, U.S. EPA has determined that nine of the eleven shipments arrived at the TSDs with both the manifest and the accompanying LDR Notification.

24. On March 25, 1994, U.S. EPA learned that the two (2) shipments sent to INMETCO, Ellwood City, Pennsylvania had arrived without the required LDR Notifications. Manifest numbers for these two shipments are PAC 5573212 and PAC 5573223. INMETCO could not provide copies of any LDR Notifications, nor verify to U.S. EPA that a LDR Notification had been sent with either of these shipments of hazardous waste. This constitutes a violation of 40 CFR §268.7(a)(1).

II

COMPLIANCE ORDER

Based on the foregoing findings and pursuant to the authority of Section 3008 of RCRA, 42 U.S.C. §6928, IT IS HEREBY ORDERED THAT:

A. Respondent shall, immediately upon the effective date of this Order, provide with each shipment of hazardous waste the proper LDR Notification pursuant to 40 CFR §268.7(a)(1) and RCRA.

B. Respondent shall, immediately upon the effective date of this Order, retain a copy of each notification in its files for a period of five years as required by 40 CFR §268.7(a)(7) and RCRA.

C. Respondent shall, within twenty (20) days after the effective date of this Order, attempt to secure each notification identified in this Complaint as missing from Respondent's files and any other notifications that Respondent has determined to be missing from its files. Respondent shall provide proof that these notifications have been obtained or provide proof that the notification was sent, but cannot be obtained from the treatment, storage or disposal facility. Notices and copies of documents required to be

sent to U.S. EPA pursuant to this Order above shall be sent to:

U.S. EPA, Region 5
Waste Management Division
77 West Jackson Boulevard, HRE-8J
Chicago, Illinois 60604-3590
Attention: Duncan Campbell
RCRA Enforcement Branch

and to:

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
P. O. Box 1049
Columbus, Ohio 43266-0149
Attention: Pamela Allen

D. Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of RCRA or other statutory authority where the handling, storage, treatment, transportation or disposal of solid or hazardous waste at this facility may present an imminent and substantial endangerment to human health or the environment.

E. Failure to comply with any provision of this Order or to pay the civil penalty assessed below shall subject Respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued non-compliance, pursuant to Section 3008(c) of RCRA, 42 U.S.C. §6928(c).

III

PROPOSED CIVIL PENALTY

Section 3008 of RCRA, 42 U.S.C. §6928, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA. Based upon the facts alleged above in this Complaint, and in consideration of the seriousness of the violations cited herein, the potential harm to human

health and the environment, the continuing nature of the violations and Respondent's good faith efforts to comply, and the ability of the Respondent to pay penalties, Complainant proposes that Respondent be assessed a civil penalty of ten thousand eight hundred dollars (\$10,800.00) for the violations alleged in this Complaint. Attachment 1 to this Complaint provides a detailed summary for the proposed civil penalty. Respondent may pay this penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall be sent to:

Solid Waste and Emergency Response Branch Secretary
Office of the Regional Counsel (CS-3T)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

IV

OPPORTUNITY TO REQUEST A HEARING

In accordance with the Administrative Procedure Act, 5 U.S.C. §§551 et seq., you have the right to request a hearing to contest any material fact contained in this Complaint and Compliance Order, and/or to contest the appropriateness of the proposed compliance schedule or amount of the penalty. Any hearing that you request will be held and conducted in accordance with the provisions of the APA, 5 U.S.C. §§551 et seq., and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and

the Revocation or Suspension of Permits," 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

If you wish to avoid being found in default, you must file a written Answer to this Complaint, pursuant to 40 C.F.R. Part 22.15, with the Regional Hearing Clerk, Planning and Management Division (MF-10J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, by **AUG 05 1994**. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer should also state:

1. The circumstances or arguments that you allege constitute the grounds of defense;
2. The facts that you intend to place at issue; and
3. Whether you request a hearing.

Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations.

A copy of this Answer and any subsequent documents filed in this action should be sent to Mr. Brett Warning, Assistant Regional Counsel, Office of Regional Counsel (C-30A), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Mr. Warning can be telephoned at (312) 886-6733.

If you fail to file a written Answer, with or without a Request for Hearing, by the required date, the Regional Administrator or Presiding Officer may issue a Default Order. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your

right to a hearing under RCRA. The civil penalty proposed in this Complaint shall then become due and payable without further proceedings sixty (60) days after a Final Order of Default is issued pursuant to 40 CFR §22.17(a). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. §3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717. U.S. EPA will impose a late payment handling charge of \$15.00 for each subsequent thirty (30) day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

V

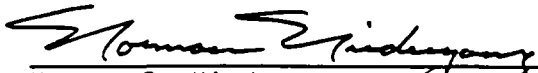
SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, write to Duncan Campbell, RCRA Enforcement Branch (HRE-BJ), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone him at (312) 886-4555.

Your request for an informal settlement conference does not extend the twenty (20) day period during which you must submit a written Answer and Request for Hearing. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order (CAFO) issued by the Director, Waste Management Division, U.S. EPA, Region 5. The issuance of such a CAFO shall constitute a waiver of your right to request a hearing on any stipulated matter in the Agreement.

Dated this 5th day of July, 1994.


Norman R. Niedergang
Associate Division Director for RCRA
Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region 5

Attachment 1
Penalty Summary

Federal Regulation	Requirement Violated	Dates of Violation	Gravity Based Component	Total Penalty
40 CFR 268.7(a)(7)	Failure to maintain a LDR Notification on-site.	September 20, 1990	\$1,000 ¹	\$1,000
40 CFR 268.7(a)(1)	Failure to attach two (2) LDR Notifications to Manifests	March 25, 1994	\$9,500 ²	\$9,500
				Total \$10,500

¹Gravity-based penalty is calculated as minor potential for harm and moderate extent of deviation.

²Gravity-based penalty is calculated as moderate potential for harm and major extent of deviation.